

## REMARKS

### *Amendments to the Specification*

The Applicants have made certain amendments to the specification. These amendments correct typographical nuances or otherwise improve the clarity of the specification including the meaning of an analog input, two-axis joystick as known in the art and as evidenced by, for example, U.S. patent number 5,521,596 as identified in the *Information Disclosure Statement* submitted concurrently herewith. See, e.g., '596:2:1-32. In this regard, the Applicants contend no new matter is introduced by these amendments.

### *35 U.S.C. § 102(a) Rejections*

#### Independent Claim 1

The Examiner rejected independent claim 1 "as being anticipated by Orbanes et al ('Orbanes', US 2002/0089541)." *Office Action*, 2. The Examiner referred to paragraph [101] and Figures 6a and 6b as purportedly evidencing:

a radial menu including a plurality of first level menu items in a circumferential arrangement . . . a selection of one of the plurality of first level menu items caus[ing] a plurality of second level menu items associated with the one first level menu item to replace the first level menu items in the circumferential arrangement.

*Office Action*, 2.

The Applicants respectfully traverse in light of, at least, the present amendment to claim 1 'wherein navigation of the radial menu is effected only in a clockwise or counter-clockwise direction.'

While Figure 6a of Orbanes (reproduced below) illustrates menu "options 604a-604d . . . at regular intervals around a circumference about the center point 606," Orbanes also provides for "[a] user activating *the center option 606*" whereby "the displayed menu [moves] up one level of hierarchy." Orbanes at [101] l. 1-2, 9-11 (emphasis added).



As noted in the specification of the present application, "one implementation of the present invention" provides for "navigation [to] always [be] selectively *effected in a clockwise or counterclockwise direction . . . around the circumference defined by the menu items.*" Specification at [0023], l. 2-5 (emphasis added). That is, "menu items are successively highlighted along a clockwise or counterclockwise path, *and the user may not navigate through the central object.*" Specification at [0023], l. 6-8 (emphasis added).

The Applicants respectfully note that "[a] claim is anticipated only if each and every element as set forth in the claim is found . . . in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). As the recited 'clockwise/counterclockwise only' limitation is not found in the teachings of Orbanes, the Applicants contend the Examiner's rejection to have been overcome.

The Applicants further note that Orbanes, in light of the present amendment, may not operate as a reference with regard to an obviousness rejection under 35 U.S.C. § 103(a). A rejection under 35 U.S.C. § 103(a) requires analysis of the inventive subject matter *as a whole*. See *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Likewise, "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP § 2141.02(VI) (citing *W.L. Gore*, 721 F.2d 1540) (emphasis in the original). Consideration of

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the present invention as a whole includes the recited 'clockwise/counterclockwise only' limitation; consideration of Orbanes as a whole evidences the specific recitation of navigation through the central object. See *Orbanes* at [101] l. 9-11. In this regard, Orbanes would *teach away* from any secondary reference purportedly disclosing the presently claimed 'clockwise/counterclockwise only' limitation.

#### Independent Claim 12

The Examiner rejected independent claim 12 per 35 U.S.C. § 102(a) and Orbanes for reasons similar to those as identified relative to claim 1. See *Office Action*, 3. As such, the Applicants contend claim 12 to be allowable for at least the same reasons as claim 1 and as set forth above, including, Orbanes failure to disclose 'navigation of the radial menu . . . only in a clockwise or counter-clockwise direction.'

#### Independent Claim 17

The Examiner rejected claim 17 "under 35 U.S.C. § 103(a) as being unpatentable over [U.S. patent publication number 2003/0010513] Miller-Smith in view of [U.S. patent publication number 2001/0010513] Rosenberg et al." *Office Action*, 7. The Applicants respectfully traverse in that Miller-Smith in combination with Rosenberg et al. fails to teach the amended limitation of 'an actuator for producing a tactile feedback . . . wherein an *intensity of the tactile feedback* corresponds to an *identify of each of the plurality of items in the menu*.' As this limitation is not taught by the Miller-Smith/Rosenberg et al. combination or in any of the other cited references, the Applicants contend a *prima facie* case of obviousness has not been made and the Examiner's rejection is overcome. See MPEP § 2143 (requiring the prior art references to "teach or suggest all the claim limitations").

While Rosenberg et al. discusses "a 'pulse' (or jolt) sensation that is output when the cursor is (a) moved between menu elements 156 of a menu 154, (b) moved on to an icon 156 button, hyperlink 162, or other graphical target, (c) moved across a boundary of a window 150 or 152, (d) moved over application-specific elements in a software title," there is no suggestion of this 'pulse' or jolt *corresponding to an IDENTITY of each of the plurality of items in the menu.* Rosenberg, [0068] at l. 2-7.

As noted by the specification of the present application, "the tactile feedback that accompanies the selection of a menu item or user operation *can vary according to the type of menu item.*" Specification at [0027], l. 8-9 (emphasis added). An example is provided wherein "selecting a car game can be accompanied by a vibration that feels like an engine starting." Specification at [0027], l. 9-10. Other tactile responses are, of course, envisioned dependent upon the particularities of the menu item selected although the relationship need not be as explicit as a car engine vibration and a racing game (e.g., a long vibration for one menu item and a short menu vibration for another). In this way, a user of the system could navigate the radial menu entirely by touch-sensation as it relates to a unique vibration for each menu item. As Rosenberg makes no suggestion that the 'pulse' or jolt uniquely identifies a particular menu item, the Applicants contend the Examiner's rejection to have been overcome.

#### Dependent Claims

The Applicants respectfully note that when an independent claim is allowable, any claim depending from that claim is also allowable. See *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). As set forth above, the Applicants believe independent claims 1, 12, and 17 to all be allowable over the prior art of record. Notwithstanding, the Applicants further make note that certain dependent claims rejected by the Examiner are allowable over the rejections proffered by the Examiner. The Applicants' specific reference to the allowability of any particular dependent claim is not to be construed that any non-referenced claim is properly rejected by the Examiner.

***Dependent Claim 4***

The Examiner rejected claim 4 under 35 U.S.C. § 103(a) by taking official notice "that adaptation of menus is well known in the art" and, "[t]herefore it would have been obvious to combine replacing a radial menu with a list menu with the teaching of Orbanes." *Office Action*, 4. The Examiner suggested the "[m]otivation to do so would have been to provide a user with the option to use a more conventional and recognizable menu format." *Office Action*, 4. The Applicants respectfully traverse.

"Official notice *unsupported by documentary evidence* should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable demonstration* as being well-known." MPEP § 2144.03(A) (emphasis added). The Applicants contend such instant and unquestionable demonstration is lacking. For example, in *In re Ahlert*, official notice was deemed proper with regard to adjusting the intensity of a flame in accordance with the required amount of heat. See *In re Ahlert*, 424 F.2d 1088 (CCPA 1970). In *In re Fox*, official notice was proper with regard to information on an audio tape being erased with new audio information is recorded over the previous information. See *In re Fox*, 471 F.2d 1405 (CCPA 1973).

The Applicants contend the claimed user operation in claim 4, wherein a radial menu is replaced with a menu in list format does *not* meet the instant and unquestionable bar in that the adaptation of a menu *specifically* from a radial format to a list format is not necessarily 'commonly known' in the art. If such adaptation is so well known, documentary evidence of this adaptation—specifically from radial to list format—should be readily available. As such, the Applicant respectfully requests the Examiner provide such documentary evidence in any subsequent action if the rejection is to be maintained. See 37 C.F.R. § 1.104(c)(2); see also *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001) (finding the Examiner "must point to some concrete evidence in the record in support of [a] finding[]" of official notice).

*Dependent Claim 5*

The Examiner rejected claim 5 as being anticipated by Orbanes in that "Orbanes teaches the graphical user interface wherein the user operation includes displaying the first level menu items." *Office Action*, 3. Claim 5, as amended, now recites 'displaying the first level menu items *in conjunction with a menu in list format*.' There is no disclosure in Orbanes with regard to *concurrent display* of a radial menu *and* a menu in list format. As such, the Applicants contend the Examiner's 35 U.S.C. § 102(a) rejection of Orbanes to have been overcome.

*Dependent Claim 6*

The Examiner rejected claim 6 contending "Orbanes [to] teach[] the graphical user interface [of claim 6] wherein the plurality of first level menu items are populated according to a default configuration." *Office Action*, 3. The Applicants traverse as they believe the Examiner's reference to paragraph [104] of Orbanes fails to suggest a default configuration. While paragraph [104] references a Home, Help, Insert, File, and View selection in the so-called 'RadPop' menus of Figure 6a, these menus do not suggest this particular arrangement of menu items to be a *default configuration* as recited in claim 6.

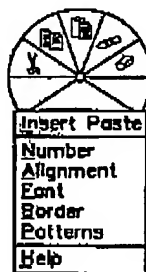
A default configuration may be understood as a configuration that is selected automatically unless an alternative is specified. While examination allows for interpretation of claims "as broadly as their terms reasonably allow," to suggest the mere presence of a series of menu items (*i.e.*, Home, Help, Insert, File, and View) as constituting such an *automatic, default configuration* would exceed the bounds of reasonable interpretation. MPEP § 2111.01(I) (quoting *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004)); see also *In re Zletz*, 893 F.2d 319, 321 (requiring claims must be given their plain meaning unless the specification provides otherwise). As such, the Applicants contend the Examiner's rejection to have been overcome.

### *Dependent Claim 7*

The Applicants traverse the Examiner's contention that providing a list of high frequency commands as described in U.S. patent number 5,701,424 to Atkinson is equivalent to the claimed 'user preference' in claim 7. See *Office Action*, 4-5. Atkinson notes "[h]igh-frequency commands may be placed in the wedges of the circular portion of the menu." *Atkinson* at col. 2, l. 66-67. *Frequency* is generally understood as the number of occurrences within a given time period. A *preference*, however, is a predisposition or predilection. Words of a claim "are generally given their ordinary and customary meaning"; the Applicants therefore contend for the Examiner to equate the disclosed frequency with the claimed reference to go beyond the ordinary and customary meaning of the term 'preference' and the rejection is, therefore, in error and overcome. *Vitronics Corp. v. Conceptronc, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996); see also *In re Zletz*, 893 F.2d at 321 (requiring claims must be given their plain meaning unless the specification provides otherwise).

### *Dependent Claim 8*

The Applicants respectfully traverse the Examiner's contention that Orbanes in combination with Atkinson "teaches a graphical user interface comprising a list format of menu items adjacent to the radial menu." *Office Action*, 5. As can be seen from Figure 4 of Atkinson (reproduced below) and referenced by the Examiner, the purported list menu is *on top of* the purported radial menu whereas claim 8 recites the list being *adjacent to* the menu. Adjacent is generally understood to mean 'immediately adjoining' or 'abutting' but *not* covering or overlapping as is evidenced in Atkinson.



The Applicants contend for the Examiner to equate a *on top of* or *overlapping* with *adjacent* to go beyond the ordinary and customary meaning of the term 'adjacent' and the rejection is, therefore, in error and overcome. See *Vitronics*, 90 F.3d at 1582 (requiring words be given "their ordinary and customary meaning"); see also *In re Zletz*, 893 F.2d at 321 (requiring claims must be given their plain meaning unless the specification provides otherwise).

#### *Dependent Claim 9*

The Applicants respectfully traverse the Examiner's rejection of claim 9, which is now dependent upon claim 8 that the Applicants contend is allowable as set forth above. Notwithstanding, the Applicants contend Atkinson not to disclose "allow[ing] menu items to be exchanged between the list format and the radial format" as asserted by the Examiner. *Office Action*, 5. Atkinson, as cited by the Examiner, does not disclose *exchanging* menu items *between* the list format and the radial format as set forth in claim 9. Atkinson, instead, addresses "high-frequency universal commands . . . always [being] in exactly the same place for the user." *Atkinson* at col. 3, l. 5-7.

*Providing a list* of high-frequency universal commands does not equate to *exchanging* information from a list menu with a radial menu. In light of the fundamental precept that words be given "their ordinary and customary meaning," the Applicants note that providing list is not the same as a, for example, *reciprocal transfer* or *exchange* of items. See *Vitronics*, 90 F.3d at 1582; see also *In re Zletz*, 893 F.2d at 321 (requiring claims must be given their plain meaning unless the specification provides otherwise). As such, the Applicants contend the Examiner's rejection to be in error and overcome.



## CONCLUSION

The Applicants believe the amendments to the specification to be permissible in that they do not introduce new matter and improve the overall clarity of the application.

The Examiner's 35 U.S.C. § 102(a) rejections of claims 1 and 12 in light of Orbanes are overcome, at the least, for failure to teach a radial menu including a plurality of first level menu items in a circumferential arrangement, wherein navigation of the radial menu is effected only in a clockwise or counter-clockwise direction. The Applicants further believe any attempt to combine Orbanes with a secondary reference would lack a *prima facie* case of obviousness as Orbanes 'teaches away' from the claimed subject matter of claims 1 and 12.

The Examiner's 35 U.S.C. § 103(a) rejections of claim 17 in light of Miller-Smith and Rosenberg et al. is overcome, at the least, for failure to teach an actuator for producing a tactile feedback, wherein the intensity of the tactile feedback corresponds to an identity of each of the plurality of items in the menu.

The dependent claims in the present application are allowable, at the least, in that they depend from otherwise allowable independent claims. The Applicants have further identified specifically allowable subject matter in a number of the dependent claims in addition to their reliance on otherwise allowable independent claims.

As the Applicants believe the Examiner's rejections to have been overcome in their entirety, the mailing of a *Notice of Allowance* in the present application is respectfully requested. The Examiner is invited to contact the Applicants' undersigned representative if it is believed such contact will further facilitate the allowance of this matter.

Respectfully submitted,  
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